IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 349 OF 2005

SMT. SHALINI M. POI ANGLE THROUGH HER POWER OF ATTORNEY SHRI MADHUKAR J. PAI ANGLE ....Petitioner

Versus

SHRI TULSHIDAS SITARAM NAIK AND 5 ORS. ....Respondents

Shri M.S. Joshi, Advocate for the Petitioner.

Coram:- D. D. SINHA, J.

Date:- 7th December, 2005

P.C.:

Heard Shri M.S.Joshi, learned Advocate for the Petitioner.

2. The Writ Petition is directed against the Order dated 6th July, 2004 passed by the IInd Addl. District Judge whereby the appeal filed by the respondents/defendants came to be allowed. Consequently Order dated 30.10.02 came to be set aside.

3. The counsel for the petitioner contended that the petitioner is the plaintiff who has filed the suit for permanent and mandatory injunction and moved an application for temporary injunction. It is the case of the plaintiff that on 21.4.02 the plaintiff noticed that the original defendants No.1 to 3 had dumped laterite stones with a view to carry out construction in the suit property. The plaintiff had also taken photographs and placed along with the plaint. The defendants have also damaged the compound wall of the suit property and therefore made a prayer in the temporary injunction application that defendants No.1 to 3, their servants and agents be restrained from carrying out any construction beyond the plinth area of

their ancestral house shown in the survey plan of the suit property or carrying out any construction of whatsoever nature in the suit property surveyed under No.23/15. The learned counsel contended that without taking into consideration the basic facts, the appellate Court allowed the appeal and set aside the order granting temporary injunction passed by the trial Court which was based on prima facie nature of the situation, balance of convenience and irreparable loss. The learned counsel therefore contended that the Order is bad in law and cannot be sustained.

4. I have considered the contentions canvassed by the learned counsel for the petitioner. Perusal of the impugned order shows that the following facts are not in dispute:-

The defendants have already got themselves registered as mundkars of two independent dwelling houses and have also purchased them and obtained sanad from the Collector. It is not in dispute that the petitioner challenged the mundcarial order before the Deputy Collector and have failed therein, irrespective of the fact that thereafter filed revision against the said order of the Deputy Collector.

5. In view of the above referred facts, the lower appellate Court came to the conclusion that the trial Court ought not to have granted injunction as prayed by the petitioner and therefore allowed the appeal preferred by the original defendants and set aside the order of injunction. The order of the lower appellate court, particularly in view of the above referred facts, clearly demonstrates that the petitioner/original plaintiff did not show any prima facie case, particularly in view of the fact that the defendants were alrelady registered as mundcars and proceedings in this regard are pending before the Tribunal.

In view of the facts referred to hereinabove, no case is made out. Writ Petition dismissed.

D. D. SINHA, J.

sl.